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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

SEP 30 2003

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

*identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez
Robert P. Wiemann, Director for
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a religious education program under the auspices of the [REDACTED]. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ him as an Islamic teacher.

The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the beneficiary was qualified for the position within the religious organization or that the offered position qualified as that of a religious worker.

On appeal, the petitioner submits a statement.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is

affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The first issue to be addressed in this proceeding is whether the petitioner has established that it qualifies as a bona fide nonprofit religious organization.

The director noted that the address on the Internal Revenue Service (IRS) exemption notice letter differed from the address on the Form I-360 petition.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that religious organizations receive new tax exempt determinations when they change addresses.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue code (IRC). Only organizations classified as religious organizations under sections 509(a)(1)(A)(i) of the IRC are considered bona fide nonprofit religious organizations for the purpose of special immigrant religious worker classification.

In this case, the petitioner submitted an IRS exemption letter stating that it was granted tax-exempt status under section 170(b)(1)(A)(vi) of the IRC. This section refers to organizations that normally receive a substantial part of their support from a governmental unit or from direct or indirect contributions from the general public. Charitable organizations or schools classified under section 170(b)(A)(1)(A)(vi) do not qualify for classification as bona fide nonprofit religious organizations, even if they are organized and operate under the principles of a particular religious faith. Such organizations do not employ religious workers as contemplated by the statute. Therefore, the petitioner has not established that it is a bona fide nonprofit religious organization. For this reason, the petition must be denied.

The second and third issues to be addressed in this proceeding are whether the petitioner has established that the offered position is a qualifying religious vocation or occupation within the religious organization and that the beneficiary is qualified for the position within the religious organization.

The director stated that the petitioner had not explained the standards required to be recognized as an Islamic teacher in its religious organization or demonstrated that the beneficiary had satisfied such standards.

On appeal, the petitioner states that the beneficiary is qualified for the position within the religious organization, since the beneficiary's ordination certificate was issued by an authorized official of the religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(2), the term "religious occupation" is defined as follows:

Religious occupation means an activity which relates to a traditional religious function. Examples of

individuals in religious occupations include, but are not limited to, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious instructors. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulatory definition of "religious organization" makes it clear that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious or theological background.

The AAO interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the religious organization.

In this case, the petitioner states that the beneficiary's duties include the following:

- Teaching of Arabic [l]anguage, [g]rammar, and [u]sage;
- Translating, [i]nterpreting the [v]erses of Holy Quran (Tafseer);
- Conducting daily, weekly prayer service;
- Leading [t]eaching [s]essions for the members;
- Sunday school classes for [c]hildren

The petitioner has not submitted any evidence to establish that the duties of the offered position are directly related to the creed of the religious denomination. Further, the petitioner has not shown that the position is defined and recognized by the governing body of the religious organization. Finally, the petitioner has not shown that the position is traditionally a

full-time, salaried religious vocation or occupation within the religious organization.

The director further stated that the petitioner had not established that the beneficiary is qualified for the position within the religious organization.

In response to the director's request for additional evidence, the petitioner stated:

[The beneficiary] is a highly qualified Islamic Teacher, who has vast experience in Islamic Education. He has a degree in Islamic Studies from [the] University of Punjab. He has worked for various Islamic congregations in Pakistan and in the United States. He meets all the criteria set by Islamic Educational System to become an Islamic Teacher.

The petitioner further stated:

[The beneficiary] has completed special training course in Islamic Research Center, a conventional training institution in Pakistan which provides extensive academic training for priests, cantors and nuns. He has attended a number of seminars on Islamic topics. He has vast experience in Islamic teaching at Islamic Seminaries in the United States and overseas.

The record contains a photocopy of the beneficiary's diploma from the University of Punjab, but this document does not specify the beneficiary's major area of study. The petitioner has not submitted the beneficiary's transcripts from that institution to corroborate its statement that the beneficiary holds a degree in Islamic studies.

The petitioner has not provided any evidence to establish that the beneficiary has completed special training at the Islamic Research Center in Pakistan, nor has the petitioner provided any evidence to show that the beneficiary has "vast experience" in Islamic teaching at seminaries in the United States.

Finally, although the petitioner states that the beneficiary has met "all the criteria" set by the Islamic educational system to become an Islamic teacher, the petitioner has not provided any

evidence listing such requirements or demonstrating how the beneficiary has satisfied such requirements. Therefore, it is concluded that the petitioner has not shown that the offered position is a qualifying religious occupation or that the beneficiary is qualified for the position within the religious organization. The petition, therefore, must also be denied for these reasons.

Beyond the director's decision, the petitioner has also failed to establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. As the appeal will be dismissed for the reasons discussed, this issue will not be addressed further in this proceeding.

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966; *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.